Civil Justice Committee 1

Amendment No. 1 to HJR0529

Lundberg
Signature of Sponsor

AMEND **House Joint Resolution No. 529***

By deleting all language after the caption and substituting instead the following:

WHEREAS, on June 26, 2015, the United States Supreme Court, by a five to four decision in *Obergefell v. Hodges*, 576 U.S. ___ (No. 14-556, 2015 WL 2473451 (June 26, 2015)), said "state laws … are … held invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples"; and

WHEREAS, the express statutory requirement in Tennessee Code Annotated, Section 36-3-104(a), that the applicants for a marriage license be a "male and female" and that there be a valid license "before" a marriage can be solemnized would appear to "exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples"; and

WHEREAS, as to the constitutional appropriateness of simply deleting the words "male and female" from Tennessee Code Annotated, Section 36-3-104(a), the Tennessee Supreme Court, in *State of Tennessee v. Crank*, No. E2012-01189-SC-R11-CD, filed February 13, 2015, said even the "legislative endorsement of elision 'does not automatically make it applicable to every situation; however, when a conclusion can be reached that the legislature would have enacted the act in question with the unconstitutional portion omitted, then elision of the unconstitutional portion is appropriate.' (internal citations omitted)"; and

WHEREAS, given the history of the marriage laws of Tennessee, this General Assembly, some members of which voted for Tennessee Code Annotated, Section 36-3-104(a), believes that Tennessee Code Annotated, Section 36-3-104(a), would never have been enacted had the words "male and female" been deleted so as to allow two people of the same sex to marry; and

Civil Justice Committee 1

Amendment No. 1 to HJR0529

Lundberg
Signature of Sponsor

AMEND **House Joint Resolution No. 529***

WHEREAS, the majority in *Obergefell* ordered the state to issue marriage licenses notwithstanding its holding that state marriage license laws that "exclude same-sex couples from civil marriage" are "invalid"; and

WHEREAS, this particular aspect of its ruling raises the broader and even more important constitutional issue of which branch of government in our constitutional republic can enact or amend state laws; now, therefore,

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE ONE HUNDRED NINTH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, THE SENATE CONCURRING, that this body expresses its strong disagreement with the constitutional overreach in *Obergefell v. Hodges* that, in violation of the constitutional and judicially recognized principles of federalism and separation of powers, allows federal courts to order or direct a state legislative body to affirmatively amend or replace a state statute.

BE IT FURTHER RESOLVED, this body concurs in the opinion of Chief Justice John Roberts, who in his dissent in *Obergefell v. Hodges*, said, "the Court's accumulation of power does not occur in a vacuum. It comes at the expense of the people. And they know it," and acknowledges the reminder of Justice Antonin Scalia in his dissenting opinion in *Obergefell v. Hodges* that "With each decision of ours that takes from the People a question properly left to them—with each decision that is unabashedly based not on law, but on the reasoned judgment of a bare majority of this Court—we move one step closer to being reminded of our impotence."